8 July 2002

Original: English

Preparatory Commission for the International Criminal Court
Working Group on the Assembly of States Parties
Preparatory Documents
New York
8-19 April 2002
1-12 July 2002

Draft report of the Working Group

Draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court

The Assembly of States Parties,

Bearing in mind the provisions of the Rome Statute of the International Criminal Court, in particular articles 36, 37, 42 and 43,

Mindful of the Rules of Procedure of the Assembly of States Parties,

Approves the following procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court:

A
Nomination of candidates for judges

1. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel the invitations for nominations of judges of the International Criminal Court.

1 bis. The invitations for nominations of judges will include the text of paragraphs 3 and 8 of article 36 of the Statute and the resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court.

2. States Parties shall nominate their candidates during the nomination period, which shall be fixed by the Bureau of the Assembly of States Parties.

3. Nominations submitted before or after the nomination period shall not be considered.

02-46504 (E)

4. If at the end of the nomination period the number of candidates remains less than the number of seats, the President of the Assembly of States Parties shall extend the nomination period.

5. States Parties to the Statute shall communicate nominations for the election of the judges of the International Criminal Court through the diplomatic channel to the Secretariat of the Assembly of States Parties.

6. Every nomination should be accompanied by a statement:

(a) Specifying in the necessary detail how the candidate fulfils each of the requirements in subparagraphs (a), (b) and (c) of paragraph 3 of article 36 of the Statute, in accordance with subparagraph 4 (a) of article 36 of the Statute;

(b) Indicating whether the candidate is being nominated for inclusion in list A or list B for the purposes of paragraph 5 of article 36 of the Statute;

(c) Containing information relating to subparagraphs (i) to (iii) of paragraph 8 (a) of article 36 of the Statute;

(d) Indicating whether the candidate has any expertise under paragraph 8 (b) of article 36 of the Statute;

(e) Indicating under which nationality the candidate is being nominated, for the purposes of paragraph 7 of article 36 of the Statute, where a candidate is a national of two or more States.

7. States that have started the process of ratification, accession or acceptance of the Statute may nominate candidates for the elections of judges to the International Criminal Court. Such nominations shall remain provisional and shall not be included in the list of candidates unless the State concerned has deposited its instrument of ratification, accession or acceptance with the Secretary-General of the United Nations before the end of the nomination period and provided that that State is a party to the Statute in accordance with paragraph 2 of article 126 of the Statute on the date of the election.

8. The Secretariat of the Assembly of States Parties shall place the nominations of candidates for judges, the accompanying statements referred to in article 36 of the Statute and other supporting documentation on the Internet web site of the International Criminal Court in any of the official languages of the Court, as soon as possible after receiving them.

9. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it through the diplomatic channel.

10. For the purposes of the first election of the judges of the International Criminal Court, the nominations shall open, by a decision of the Bureau, during the first meeting of the Assembly of States Parties and shall close on [1 November 2002].

B
Election of judges

11. The Bureau of the Assembly of States Parties shall fix the date of the election.

12. The Secretariat of the Assembly of States Parties shall prepare, in accordance with paragraph 5 of article 36 of the Statute, two lists of candidates in English alphabetical order.

13. The election of judges shall be a matter of substance, and subject to the requirements of paragraph 7 (a) of article 112 of the Statute.

14. The persons elected to the Court shall be those candidates who obtain the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

15. [Pending]

16. [Pending]

17. [Pending]

18. In the event of a tie for a remaining seat, there shall be a restricted ballot limited to those candidates who have obtained an equal number of votes.

19. When two or more candidates of the same nationality obtain the required majority, the candidate who receives the higher number of votes shall be considered elected.

20. For the purpose of the first election, the President of the Assembly of States Parties shall draw lots, in accordance with paragraph 9 (b) of article 36 of the Statute.

C
Judicial vacancies

21. In the event of a judicial vacancy, the same procedures for the election of judges shall apply mutatis mutandis.

22. The Secretariat of the Assembly of States Parties shall circulate through the diplomatic channel invitations for nominations within one month of the occurrence of a judicial vacancy.

D
Nomination of candidates for the Prosecutor

23. The procedures for the nomination of candidates for judges shall apply mutatis mutandis to the nomination of the Prosecutor.

24. Nominations for the post of the Prosecutor should preferably be made with the support of multiple States Parties.

25. Each nomination should be accompanied by a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

E
Election of the Prosecutor

26. The Bureau of the Assembly of States Parties shall fix the date of the election.

27. The Secretariat of the Assembly of States Parties shall prepare a list of candidates in English alphabetical order.

28. Every effort shall be made to elect the Prosecutor by consensus.

29. In the absence of consensus, the Prosecutor shall be elected, in accordance with paragraph 4 of article 42 of the Statute, by secret ballot by an absolute majority of the members of the Assembly of States Parties.

30. Deleted.

31. Deleted.

32. In the interest of a timely conclusion of the election, if after three ballots no candidate has obtained the required majority, the balloting shall be suspended to give an opportunity for any withdrawal of candidatures. Before such suspension, the President of the Assembly of States Parties will announce when balloting shall resume. Upon resumption of balloting, if no candidate obtains in the first ballot the majority required, further ballots shall be taken, which shall be restricted to the candidates obtaining the two largest number of votes.

F
Nomination of the Deputy Prosecutors

33. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled, in accordance with paragraph 4 of article 42 of the Statute.

34. For each nomination, the Prosecutor should include a statement specifying in the necessary detail how the candidate fulfils the requirements of paragraph 3 of article 42 of the Statute.

35. In proposing the list of candidates, the Prosecutor should bear in mind, in accordance with paragraph 2 of article 42, that the Prosecutor and the Deputy Prosecutors shall all be of different nationalities. A candidate who could be regarded as a national of more than one State shall be deemed to be a national of the State in which that candidate ordinarily exercises civil and political rights.

35 bis. The Secretariat of the Assembly of States Parties shall place the nominations of candidates for the position of Deputy Prosecutor, the accompanying statements of qualification and other supporting documentation on the Internet web site of the International Criminal Court in any of the official languages of the Court as soon as possible after receiving them.

36. The Secretariat of the Assembly of States Parties shall prepare a list in English alphabetical order of all persons thus nominated, with accompanying documents, and shall circulate it through the diplomatic channel.

G
Election of the Deputy Prosecutors

37. The procedures for the election of the Prosecutor in section E shall apply mutatis mutandis to the election of any Deputy Prosecutor.

38. In case of an election for more than one position for the post of Deputy Prosecutor:

(a) The persons elected to the post of Deputy Prosecutor shall be those candidates who obtain the highest number of votes and an absolute majority of the members of the Assembly of States Parties;

(b) If the number of eligible candidates obtaining the required majority for the elections exceeds the number of positions for Deputy Prosecutor so allocated thereunder, the candidates obtaining the highest number of votes to fill the number of seats so allocated shall be considered elected.